

The original sentencing hearing was scheduled for October 31, 2011. However, Probation gave Mr. Olvero a 16 level enhancement for his prior 1994 drug trafficking offense and the government only gave him a 12 level enhancement for this same offense. Defense counsel requested a continuance to file an objection to the PSR and to brief the issue. The sentencing

1 hearing was continued several times until March 8, 2012. Subsequently, Mr. Olvero also filed a
2 Motion to Withdraw Guilty Plea.

3 On March 8, 2012, this Court issued written orders denying Mr. Olvero's Motion to
4 Withdraw Guilty Plea and Objections to the PSR. The central issue in both the Motion to
5 Withdraw Guilty Plea and Objections to the PSR was the scoring under the guidelines of Mr.
6 Olvero's 1994 drug trafficking conviction. Mr. Olvero argued that he was sentenced to a total of
7 365 days in prison for this offense. According to Mr. Olvero, this conviction should only score 2
8 points and not merit the 16 level enhancement for a drug trafficking offense. The PSR and
9 Addendum to the PSR correctly stated that Mr. Olvero was sentenced to a total of 545 days in
10 prison for this offense. Accordingly, the offense scores three points and qualifies for the 16 level
11 enhancement.

12 Mr. Olvero then requested two more continuances to brief the issue of the scoring of the 1994
13 drug trafficking offense and the Court's orders. The sentencing hearing was set for April 9, 2012.
14 On March 26, 2012, the Government filed a Motion to Dismiss the Information under Federal Rules
15 Criminal Procedure 48(a), with no reason other than "the interest of justice." On March 28, 2012,
16 this Court denied the Government's Motion stating that the Government had not given any reason
17 and that the defendant had already pled guilty. Also, on March 28, 2012 (the same day), Mr.
18 Olvero filed a Motion for Reconsideration of this Court's March 28, 2012 order. Mr. Olvero
19 argues that this Court is limited in its discretion to deny an unopposed Rule 48(a) motion.

20 Under current Ninth Circuit law, the Court is limited in denying an unopposed Rule 48(a)
21 motions. See United States v. Garcia-Valenzuela, 232 F.3d 1003 (9th Cir. 2000); United States v.
22 Gonzalez, 58 F.3d 459 (th Cir. 1995). The Ninth Circuit has stated that the district court may deny
23 an uncontested Rule 48(a) motion if it is "clearly contrary to manifest public interest." Gonzalez,
24 58 F.3d at 461 (quoting United states v. Weber, 721 F.2d 266, 268 (9th Cir. 1984)). The Ninth
25 Circuit applies the "abuse of discretion" standard for review. Id.

26 In this case, the central issue is the scoring of Mr. Olvero's 1994 prior drug trafficking
27 conviction. There has been numerous continuances, arguments and briefing on the issue.
28 Ultimately, the Court made its decision and issued written orders denying Mr. Olvero's Motion to

1 Withdraw Guilty Plea and Objections. The Government then brought a Motion to Dismiss
2 Information without giving any reason. This Court finds that it is "clearly contrary to manifest
3 public interest" for the parties to circumvent adverse rulings by agreeing to dismiss the current
4 proceedings. Although the Government does have the power and discretion to prosecute,
5 dismissing proceedings after adverse rulings by the Court seriously undermines the authority of the
6 Court and is definitely against the interests of the public. **Accordingly,**

7 **IT IS ORDERED** that the Defendant's Motion for Reconsideration of denial of the
8 Government's Motion to Dismiss the Information is **DENIED**.

9 **IT IS SO ORDERED.**

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11
12 March 29, 2012 
13 date GORDON THOMPSON, JR.
United States District Judge

14 cc: All counsel and parties without counsel
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